

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

ROBERT FITZCHARLES,	:	CIVIL ACTION NO. 3:CV-15-1036
	:	
Plaintiff	:	(Judge Caputo)
	:	
v.	:	(Magistrate Judge Saporito)
	:	
SUPERINTENDENT McNALLY, et al.,	:	
	:	
Defendants	:	

**REPORT AND RECOMMENDATION**

The plaintiff, an inmate at the State Correctional Institution at Dallas, Dallas, Pennsylvania, filed this civil rights action pursuant to 42 U.S.C. § 1983 on May 28, 2015. Plaintiff is proceeding *pro se*.

The matter is currently proceeding on an amended complaint (Doc. 9) which is the subject of a motion to dismiss filed by defendants Martin, McNally and Smith<sup>1</sup> on October 14, 2015 (Doc. 29) and a motion to dismiss filed by defendant Stanish on October 28, 2015. (Doc. 35). Defendants' motions are not yet ripe for disposition.

On November 18, 2015, plaintiff filed with the Court a document entitled "Plaintiff's Motion to Withdraw Civil Action Suit" (**Doc. 40**), wherein he states, "... Robert Fitzcharles, pro- se, Plaintiff, respectfully ask's (sic) this Honorable Court to

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1. By Order of October 16, 2015, the docket was corrected to reflect that the correct name of defendant Nurse Smith is Matthew Soska. (Doc. 31).

consider Plaintiff's Motion to Withdraw his Civil Action Suit against all listed named defendant's (sic) in the above captioned case, without prejudice." (Doc. 40, p. 1).

Under Rule 41(a)(2) of the Federal Rules of Civil Procedure, "an action shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper."

Based on the foregoing, it is respectfully recommended that the plaintiff's motion to withdraw civil action suit filed November 18, 2015 (**Doc. 40**) be construed as a Notice of Dismissal under Rule 41(a)(2) of the Federal Rules of Civil Procedure and that this case be dismissed without prejudice.

*s/ Joseph F. Saporito, Jr.*  
**JOSEPH F. SAPORITO, JR.**  
**United States Magistrate Judge**

**Dated: November 19, 2015**

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SUPERINTENDENT McNALLY, et al.,	:	
	:	
Defendants	:	

**NOTICE**

**NOTICE IS HEREBY GIVEN** that the undersigned has entered the foregoing **Report and Recommendation** dated **November 19, 2015**.

Any party may obtain a review of the Report and Recommendation pursuant to Rule 72.3, which provides:

Any party may object to a magistrate judge's proposed findings, recommendations or report addressing a motion or matter described in 28 U.S.C. § 636 (b)(1)(B) or making a recommendation for the disposition of a prisoner case or a habeas corpus petition within ten (10) days after being served with a copy thereof. Such party shall file with the clerk of court, and serve on the magistrate judge and all parties, written objections which shall specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis for such objections. The briefing requirements set forth in Local Rule 72.2 shall apply. A judge shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made and may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge, however, need conduct a new hearing only in his or her discretion or where required by law, and may consider the record developed before the

magistrate judge, making his or her own determination on the basis of that record. The judge may also receive further evidence, recall witnesses or recommit the matter to the magistrate judge with instructions.

Failure to file timely objections to the foregoing Report and Recommendation may constitute a waiver of any appellate rights.

s/ Joseph F. Saporito, Jr.  
**JOSEPH F. SAPORITO, JR.**  
**United States Magistrate Judge**

**Dated: November 19, 2015**